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FILED

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U.S. DISTRICT COURT
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

James Alan Bush,) Case No.: C 08-01354 (RS) JF
)
Petitioner,) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
v.) PLAINTIFF'S EX PARTE MOTION TO
) EXPEDITE DISCOVERY
Officer Anthony Sult, Sunnyvale)
Department of Public Safety,)
)
Respondents.) Judge Jeremy Fogel
)

MEMORANDUM OF POINTS AND AUTHORITIES

1. C.A.9 (Cal.) 1978. A person "subjects" another to the deprivation of a constitutional right within the meaning of the Civil Rights Act of 1871, if he does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is

1 made. [Johnson v. Duffy, 588 F.2d 740]

2 2. C.A.9 (Cal.) 1986. State officers' inaction, as well as their
3 affirmative acts, may be basis for civil rights claims; yet injury
4 must be loss of rights secured by Constitution or federal law.

5 [Escamilla v. City of Santa Ana, 796 F.2d 266]

6 3. C.D.Cal. 1985. A "constitutional duty" arises only when the persons
7 acting under color of state law have created a special or custodial
8 relationship or are aware of a special danger with respect to a
9 particular victim. [Escamilla v. City of Santa Ana, 796 F.2d 266]

10 4. E.D.Cal. 1995. Person deprives another of federal rights within
11 meaning of § 1983 if he does affirmative act, participates in
12 another's affirmative acts, or omits to perform act which he is
13 legally required to do that causes deprivation. [Anthony v. County
14 of Sacramento, 898 F.Supp. 1435]

15 5. To prevail on civil rights claim under § 1983, the defendants must
16 be deliberately indifferent to the plaintiff's safety or have a
17 custom or policy that violates federally protected rights. [Ley v.
18 State, 8 Cal.Rptr.3d 642, 114 Cal.App.4th 1297, review denied]